

§ 76.975

(c) A bona fide proposal, as used in this section, is defined as a proposal from a potential leased access programmer that includes the following information:

- (1) The desired length of a contract term;
- (2) The tier, channel and time slot desired;
- (3) The anticipated commencement date for carriage;
- (4) The nature of the programming;
- (5) The geographic and subscriber level of service requested; and
- (6) Proposed changes to the sample contract.

(d) All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator.

(e) A cable system operator must respond to a bona fide proposal within 10 days after receipt.

(f) A cable system operator will be subject to a forfeiture for each day it fails to comply with § 76.972(a) or § 76.972(e).

(g)(1) Operators of systems subject to small system relief shall provide the information required in paragraph (b) of this section within 30 calendar days of a bona fide request from a prospective leased access programmer. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

(2) Bona fide requests, as used in this section, are defined as requests from potential leased access programmers that have provided the following information:

- (i) The desired length of a contract term;
- (ii) The time slot desired;
- (iii) The anticipated commencement date for carriage; and
- (iv) The nature of the programming.

[73 FR 10691, Feb. 28, 2008]

EFFECTIVE DATE NOTE: At 73 FR 10691, Feb. 28, 2008, § 76.972 was added. Paragraphs (a), (b), (c), (d), (e), and (g) of this section, which contain information collection and record-keeping requirements, and paragraph (f), which contains requirements related to

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those information collection requirements, will not become effective until approval has been given by the Office of Management and Budget.

§ 76.975 Commercial leased access dispute resolution.

(a) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may bring an action in the district court of the United States for the Judicial district in which the cable system is located to compel that such capacity be made available.

(b) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act, or our implementing regulations, §§ 76.970, 76.971, and 76.972 may file a petition for relief with the Commission.

(c) A petition must contain a concise statement of the facts constituting a violation of the statute or the Commission's rules, the specific statute(s) or rule(s) violated, and certify that the petition was served on the cable operator.

(d) The petition must be filed within 60 days of the alleged violation. The time limit on filing complaints will be suspended if the complainant files a notice with the Commission prior to the expiration of the filing period, stating that it seeks an extension of the filing deadline in order to pursue active negotiations with the cable operator, and the cable operator agrees to the extension.

(e) *Discovery.* In addition to the general pleading and discovery rules contained in § 76.7 of this part, parties to a leased access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended.

Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

(f) *Protective orders.* In addition to the procedures contained in § 76.9 of this part related to the protection of confidential material, the Commission may issue orders to protect the confidentiality of proprietary information required to be produced for resolution of leased access complaints. A protective order constitutes both an order of the Commission and an agreement between the party executing the protective order declaration and the party submitting the protected material. The Commission has full authority to fashion appropriate sanctions for violations of its protective orders, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to confidential information in Commission proceedings.

(g) The cable operator or other respondent will have 30 days from the filing of the petition to file a response. To the extent that a cable operator expressly references and relies upon a document or documents in asserting a defense or responding to a material allegation, such document or documents shall be included as part of the response. If a leased access rate is disputed, the response must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after a response is submitted, the staff finds a prima facie violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding.

(h)(1) The Media Bureau will resolve a leased access complaint within 90 days of the close of the pleading cycle.

(2) The Media Bureau, after consideration of the pleadings, may grant the

relief requested, in whole or in part, including, but not limited to ordering refunds, injunctive measures, or forfeitures pursuant 47 U.S.C. 503, denying the petition, or issuing a ruling on the petition or dispute.

(3) To be afforded relief, the petitioner must show by clear and convincing evidence that the cable operator has violated the Commission's leased access provisions in 47 U.S.C. 532 or § 76.970, § 76.971, or § 76.972, or otherwise acted unreasonably or in bad faith in failing or refusing to make capacity available or to charge lawful rates for such capacity to an unaffiliated leased access programmer.

(4) As part of the remedy phase of the leased access complaint process, the Media Bureau will have discretion to request that the parties file their best and final offer for the prices, terms, or conditions in dispute. The Commission will have the discretion to adopt one of the proposals or choose to fashion its own remedy.

(i) During the pendency of a dispute, a party seeking to lease channel capacity for commercial purposes, shall comply with the rates, terms and conditions prescribed by the cable operator, subject to refund or other appropriate remedy.

[58 FR 29753, May 21, 1993, as amended at 62 FR 11382, Mar. 12, 1997; 73 FR 10692, Feb. 28, 2008]

EFFECTIVE DATE NOTE: At 73 FR 10692, Feb. 28, 2008, in § 76.975, paragraphs (b) through (g) were revised, paragraph (h) was redesignated as paragraph (i) and a new paragraph (h) was added. Paragraphs (d), (e),(g), and (h)(4) of this section, which contain information collection and recordkeeping requirements, and paragraphs (b), (c), and (f), which contains requirements related to those information collection requirements, will not become effective until approval has been given by the Office of Management and Budget.

§ 76.977 Minority and educational programming used in lieu of designated commercial leased access capacity.

(a) A cable operator required by this section to designate channel capacity for commercial use pursuant to 47 U.S.C. 532, may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified